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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

WAYNE STARK, et al.,

Plaintiffs and Appellants,

v.

NORMA ORTIZ,

Defendant and Respondent.

A153680

(Humboldt County  
Super. Ct. No. DR110802)

In this litigation between neighboring landowners, plaintiffs Wayne, Katherine, Matthew, and Nicole Stark (collectively, plaintiffs) appeal the trial court's postjudgment order awarding contractual attorney fees to defendant Norma Ortiz. We affirm.

**BACKGROUND<sup>1</sup>**

Ortiz and plaintiffs are parties to an easement agreement (the Easement Agreement) granting Ortiz an exclusive easement on a portion of plaintiffs' land.<sup>2</sup> The Easement Agreement includes the following attorney fees provision: "If any legal action or proceeding arising out of or relating to this Agreement is brought by either party to this

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<sup>1</sup> Additional background facts are set forth in our opinion on plaintiffs' appeal from the judgment. (*Stark v. Ortiz* (Jan 23, 2019, A153324) [nonpub. opn.].) We previously granted plaintiffs' request for judicial notice of the entire record on appeal in No. A153324. We deny as moot Ortiz's May 30, 2018 request for judicial notice of certain trial court records which are part of the record on appeal in No. A153324.

<sup>2</sup> Ortiz and plaintiffs are successors-in-interest to the original signatories of the Easement Agreement and as such, by its terms, are bound by it.

Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorney's fees, costs and expenses incurred in the action or proceeding by the prevailing party."

Plaintiffs sued Ortiz alleging claims for declaratory relief, quiet title, ejectment, and trespass. The complaint attached and incorporated the Easement Agreement, alleged Ortiz's use of the easement area "has overburdened and exceeds the scope of the easement described in the Easement Agreement," and further alleged the Easement Agreement is "void" because it effects "an illegal subdivision of land" under state and local law, including the Subdivision Map Act (Govt. Code, § 66410 et seq.).

Ortiz filed a cross-complaint alleging claims against plaintiffs for trespass and nuisance. The cross-complaint also alleged a claim for breach of contract against plaintiffs' predecessors-in-interest, who executed the Easement Agreement. Ortiz dismissed her cross-complaint during trial.

Following a bench trial, the trial court issued judgment for Ortiz on all of plaintiffs' claims. The judgment describes plaintiffs' claims as follows: "The gravamen of Plaintiffs' claims involved the grant of an exclusive easement in favor of Defendant . . . . Plaintiffs[] claimed this grant of an exclusive easement by their predecessor in interest was a violation of the Subdivision Map Act and that Defendant wrongfully denied Plaintiffs[] their right to use and occupy the exclusive easement area." The judgment declares Ortiz the prevailing party.

Ortiz subsequently moved for contractual attorney fees under the Easement Agreement. The trial court awarded fees over plaintiffs' opposition. The court found "[a]ll four causes of action related to the use by Defendant of the easement area described in the Easement Agreement and the rights of the parties to that easement area. As such, all four causes of action arose out of or related to the Easement Agreement." The court noted some of the requested fees were for work "related to the dismissed cross-complaint" and declined to award fees for that work, but awarded Ortiz the remainder of the requested fees. This appeal followed.

## DISCUSSION

### I. *Type of Claims*

“If a cause of action is ‘on a contract,’ and the contract provides that the prevailing party shall recover attorneys’ fees incurred to enforce the contract, then attorneys’ fees must be awarded on the contract claim in accordance with Civil Code section 1717.” (*Exxess Electronixx v. Heger Realty Corp.* (1998) 64 Cal.App.4th 698, 706 (*Exxess Electronixx*)). “Civil Code section 1717 does not apply to tort claims; it determines which party, if any, is entitled to attorneys’ fees on a *contract claim only*. [Citations.] As to tort claims, the question of whether to award attorneys’ fees turns on the language of the contractual attorneys’ fee provision, i.e., whether the party seeking fees has ‘prevailed’ within the meaning of the provision and whether the type of claim is within the scope of the provision.” (*Id.* at p. 708.) “‘On appeal this court reviews a determination of the legal basis for an award of attorney fees de novo as a question of law.’ ” (*Butler-Rupp v. Lourdeaux* (2007) 154 Cal.App.4th 918, 923.)

Plaintiffs contend their causes of action were not “on a contract” and did not “aris[e] out of or relat[e] to” the Easement Agreement. Specifically, plaintiffs construe their claims as seeking relief from Ortiz’s violation of her “duty to comply with the Subdivision Map Act and local land use law,” a duty that existed before the Easement Agreement. Plaintiffs rely on *Exxess Electronixx*, in which the Court of Appeal, after concluding the plaintiff’s tort claims were not “on a contract” within the meaning of Civil Code section 1717, considered whether they fell within the scope of a contractual provision awarding fees “‘[i]f any Party or Broker brings an action or proceeding to enforce the terms hereof or declare rights hereunder.’ ” (*Exxess Electronixx, supra*, 64 Cal.App.4th at pp. 708–709.) The Court of Appeal concluded the plaintiff’s tort claims, “premised on a duty—specifically, a duty to disclose defects in the premises—that was not created by the lease [containing the fees provision],” were not brought to “enforce the terms” of or “declare rights” under the contract. (*Id.* at p. 711.) The Court of Appeal further found the defendant’s defense, which was based on a lease provision, did not bring the action within the narrow fees provision because it applied only when a party

“ ‘brings an action or proceeding to enforce’ ” the contract, which did not include a defense to enforce the contract. (*Id.* at p. 711–712.)

*Exxess Electronixx* characterized the contractual fee provision before it as “quite narrow,” and noted “courts have interpreted broader provisions to permit an award of attorneys’ fees on a tort claim,” citing cases interpreting provisions, similar to the one at issue here, authorizing fees “in ‘any “legal action . . . relating to” the contract’ ” or in “ ‘any “lawsuit or other legal proceeding” to which “this Agreement gives rise.” ’ ” (*Exxess Electronixx*, *supra*, 64 Cal.App.4th at pp. 712–713.) We fail to see the relevance of *Exxess Electronixx*’s interpretation of a different, narrower fee provision to the broader provision at issue here, which applies to “any legal action or proceeding arising out of or relating to” the Easement Agreement. (Cf. *Lerner v. Ward* (1993) 13 Cal.App.4th 155, 159–160 [contractual provision permitting prevailing party fees “ ‘[i]n any action or proceeding arising out of this agreement’ ” authorized fees on plaintiffs’ tort claim alleging the defendants, “through their fraudulent representations, induced [the plaintiffs] to enter into an agreement to purchase the property,” because the claim “arose out of the written agreement”].)

Even assuming none of plaintiffs’ claims are “on a contract” within the meaning of Civil Code section 1717, we find they are all “arising out of or relating to” the Easement Agreement and thus fall within the scope of its attorney fee provision.<sup>3</sup> Plaintiffs’ claim for declaratory relief sought “a judicial determination of Plaintiffs’ rights and duties under the Easement Agreement and a declaration that Plaintiffs’ interpretation of the violation of the Easement Agreement and the illegal formation of the Easement Agreement are correct.” This claim—seeking a declaration of the terms and validity of the Easement Agreement—plainly arises out of and relates to the Easement Agreement. Plaintiffs’ quiet title cause of action sought to quiet title against Ortiz’s claim “made under the Easement Agreement in Plaintiffs’ Property in that the Easement Agreement is

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<sup>3</sup> Neither party suggests a different outcome would result depending on whether Ortiz’s entitlement to fees is governed by Civil Code section 1717 or the contractual fee provision.

an illegal and void act . . . .” Again, the claim rests on whether the Easement Agreement is void, and thus arises out of and relates to the validity of the Easement Agreement. The ejectment claim sought to eject Ortiz from her “wrongful occupation of Plaintiffs’ Property . . . .” Because the wrongfulness of Ortiz’s occupation depends on the interpretation and validity of the Easement Agreement, this claim too arises out of and relates to the Easement Agreement. Finally, the trespass claim alleged Ortiz’s “entry onto Plaintiffs’[] Property was without Plaintiffs’ permission and without any legal authority.” As with the ejectment claim, the wrongfulness of Ortiz’s entry hinges on the scope and validity of the Easement Agreement, and the claim thus arises out of and relates to the Easement Agreement. Plaintiffs’ contention that their claims were based on seeking compliance with the Subdivision Map Act is unavailing—the complaint alleged the Easement Agreement was void because it violated the Subdivision Map Act, and thus still arose out of and related to the Easement Agreement.

## II. *Prevailing Party*

Plaintiffs contend the trial court erred in finding Ortiz the prevailing party because Ortiz dismissed her cross-complaint.

Plaintiffs do not dispute that Ortiz was the prevailing party on their complaint. The trial court did not determine Ortiz to be the prevailing party on her cross-complaint: the court only awarded Ortiz fees for work spent defending against plaintiffs’ complaint and deducted from her requested fee award fees for time spent prosecuting her cross-complaint.

Plaintiffs argue they are the prevailing parties on Ortiz’s cross-complaint and thus entitled to fees for work spent defending against the cross-complaint. Plaintiffs did not seek attorney fees in the trial court and any entitlement they have to fees is not before us.

To the extent plaintiffs argue the trial court abused its discretion in finding Ortiz the prevailing party in the entire action—considering both plaintiffs’ complaint and Ortiz’s cross-complaint—and assuming the trial court so found, we disagree. Where, as here, “the contract allows the prevailing party to recover attorney fees but does not define ‘prevailing party’ or expressly either authorize or bar recovery of attorney fees in the

event an action is dismissed, a court may base its attorney fees decision on a pragmatic definition of the extent to which each party has realized its litigation objectives, whether by judgment, settlement, or otherwise.” (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 622.) Plaintiffs offer no reason why the trial court abused its discretion in finding Ortiz realized more of her litigation objections than plaintiffs did.<sup>4</sup>

### III. *Billing Records*

Plaintiffs identify six billing entries for communications “from,” “to,” or “with” “client.” They contend the description of this work is so vague it cannot be determined whether the communications were about plaintiffs’ lawsuit or some unrelated matter.

The trial court found the claimed fees—with the exception of the deducted fees for work on the cross-complaint—were for legal work defending against plaintiffs’ claims. Accompanying the fee motion was a declaration in which Ortiz’s counsel averred the billing records document “time spent and fees incurred *on this matter*.” (Italics added.) “The law is clear . . . that an award of attorney fees may be based on counsel’s declarations, without production of detailed time records.” (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375.) Thus, substantial evidence supports the trial court’s finding.

### DISPOSITION

The order is affirmed. Respondent is awarded her costs on appeal.

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<sup>4</sup> The bench officer who issued the fee award was not the same bench officer who presided over the trial. Plaintiffs argue that “when, as here, the fee order under review was rendered by a judge other than the trial judge, we may exercise ‘somewhat more latitude in determining whether there has been an abuse of discretion than would be true in the usual case.’ ” (*Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 616.) A less deferential standard of review would not change our conclusion.

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SIMONS, J.

We concur.

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JONES, P.J.

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NEEDHAM, J.

(A153680)